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Robert Joseph Angen

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/813,606
Filing Date: March 31, 2004
Appellant(s): ANGEN ET AL.

Brian M. Buroker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 10, 2008 appealing from the Office action mailed June 6, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|----------------|---------|
| 606,889 | GREGORY | 7-1898 |
| D305,190 | WINTER, et al. | 12-1989 |
| 5,165,538 | PETERS | 11-1992 |

6,467,745

SICKELS

10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

- Claims 1 and 5-7 are rejected under 35 U.S.C. 102(b) as anticipated by US Patent No. 606,889 to Gregory (hereafter "Gregory").
- Claims 2, 3, 10, 11, 12, and 14-16 are rejected under 35 U.S.C. 103 as unpatentable over Gregory in view of US Patent No. Des. 305,190 to Winter et al. (hereafter "Winter").
- Claims 8, 9, 17, and 18 are rejected under 35 U.S.C. 103 as unpatentable over Gregory in view of Winter, and further in view of US Patent No. 5,165,538 to Peters (hereafter "Peters").
- Claims 4 and 13 are rejected under 35 U.S.C. 103 as unpatentable over Gregory in view of Winter, and further in view of US Patent No. 6,467,745 to Sickels (hereafter "Sickels").

(10) Response to Argument

Appellant's arguments will be addressed in the form and order in which they are presented in the Appeal Brief.

B. The Rejection of Claim 1 and 5-7 Under 35 U.S.C. 102

1. Claim 1

Appellant contends on pages 7 and 8 of the Appeal Brief that Gregory fails to teach each and every claim limitation of claim 1. In particular, Appellant alleges that "Gregory fails to show at least the limitation directed to 'one or more wall mounting assemblies for mounting to a wall and comprising a slotting mechanism for removably mounting a shelf mount assembly.'" (Appeal Brief, page 8) (emphasis omitted).

Appellant is correct that the Final Rejection contends that elements A, C, D, and E as shown in Figures 1 and 2 of the Gregory reference anticipate the claimed "wall mount assembly." Appellant alleges that this interpretation is incorrect because "(1) Gregory does not teach or suggest an assembly for mounting to a wall, (2) Gregory does not teach or suggest a slotting mechanism for removably mounting a shelf mount assembly, and (3) Gregory does not teach or suggest a shelf mount assembly." (Appeal Brief, page 8) (emphasis omitted). With respect to (1), the Examiner contends that the claim limitation "for mounting to a wall" recites an intended use of Appellant's invention, and thus a reference need only be capable of performing that use. Gregory teaches the mounting of the assembly comprising elements A, C, D, and E to a desk via screws passed through screw holes B (Gregory, col. 1, lines 37-47). This mounting technique could be used to perform the intended use of mounting to a wall as claimed in Appellant's application. Furthermore, Gregory's system is mounted to the side of a desk, which one of ordinary skill in the art could consider a "wall," when that limitation is given its broadest reasonable interpretation. A "wall" is defined as a "vertical structure or partition that serves to enclose or separate." (Webster's Dictionary). The side of a desk meets this definition, and may indeed be considered a "side wall." Accordingly, the

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Examiner maintains that Gregory teaches a wall mount assembly for mounting to a wall within the meaning of the instant invention.

With respect to (2) and (3), the Examiner maintains that Gregory teaches a "slotting mechanism" for removably mounting a "shelf mount assembly." (see Claim 1, lines 3-6). As set forth in the Final Rejection, elements J, F, and M as shown in Figures 1 and 2 of Gregory anticipate the claimed "shelf assembly." (Final Rejection, page 2). These elements are attached to the wall mount assembly comprising elements A, C, D, and E via a cooperating "shelf mount assembly," pin H and thumbscrew I (Gregory, col. 1, line 48 – col. 2, line 69). Pin H projects into a "slotting mechanism" comprising the hole in lug D, and thumbscrew I projects into a "slotting mechanism" comprising the hole in lug C; it is noted that the beveled edge L of surface plate M rests upon beveled edge K (Gregory, col. 1, line 48 - col. 2, line 69). It follows that when pin H and thumbscrew I are removed from these slots, the assembly comprising elements J, F, and M will be removed from the assembly comprising elements A, C, D, and E without removing elements A, C, D, and E from the surface to which they are attached via screws and screw holes B. Accordingly, the pin H and thumbscrew I, and the respective holes into which they are inserted anticipate the claimed "shelf mount assembly" and "slotting mechanism," as those terms would be understood by one of ordinary skill in the art when accorded their broadest reasonable interpretation in view of the specification.

Appellant also argues that pin H and thumbscrew I of Gregory are intended for "direct attachment." This interpretation is incorrect in view of the teachings of Gregory. Gregory explicitly recites that the bracket F "is adapted to swing upon the centers G,

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and is pivotaly secured to the lugs by a pin H, formed with the upper portion [of bracket F] and projecting downward into a suitable hole in the lug D, and also at its lower portion by the thumb-screw I, which, passing through the lug C, is threaded into the lug J, formed upon said bracket. The object of this arrangement is to permit the binding of the bracket in any adjustment by the proper manipulation of thumbscrew I, which will draw the bracket firmly downward..." (Gregory, col. 1, line 48 – col. 2, line 60) (emphasis added). This teaching demonstrates that the pin H and thumbscrew I are not intended for direct, non-removable attachment; rather, Gregory teaches that elements H and I (and the slots into which they extend) provide a means for releasing the bracket F from a secured position, and re-securing it in a different position. It follows that when thumbscrew I is fully unthreaded from the slot into which it extends, pin I can be removed from the slot into which it extends, and the bracket F can be removed from the wall mount assembly comprising elements A, C, D, and E without removing elements A, C, D, and E from the surface to which they are attached.

Accordingly, the Examiner maintains that the Gregory reference anticipates the limitations of claim 1.

Under an alternative interpretation of the Gregory reference, the Examiner maintains the following, rendering Appellant's claim 1 anticipated: element M may anticipate the claimed shelf assembly; elements A, E, C, and D may anticipate the claimed one or more wall mount assemblies, with the hole in lug D comprising the claimed slotting mechanism; elements H and F (which are unitary —Gregory, col. 1,

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lines 48-51) may anticipate the claimed shelf mount assembly; and the disk N may anticipate the claimed display object mounting assembly.

2. Claim 5

In regard to claim 5, Appellant argues that "Gregory fails to disclose the display system is capable of mounting a model car as a display object." (Appeal Brief, page 10). The Examiner acknowledges that Gregory does explicitly disclose the display of a model car. Appellant's argument, however, is directed to an intended use of the claimed invention. Claim 5 requires that the display system is "capable of mounting a model car as a display object." The Examiner maintains that Gregory anticipates this limitation because his support is capable of supporting a variety of objects on plate M or disk N shown in Figures 1 and 2.

3. Claim 6

In regard to claim 6, Appellant argues that "Gregory fails to disclose a packaging attachment mechanism wherein the mounting assembly utilizes the packaging attachment mechanism to secure the display object to a retrofit bracket, the retrofit bracket being rotatably and removably secured to the shelf assembly." (Appeal Brief, page 10). The Examiner maintains that Gregory anticipates claim 6. As set forth in the Final Rejection, the screws adapted to insert into screw holes P (Gregory, Figure 2) anticipate the claimed "packaging attachment mechanism" when that limitation is accorded its broadest reasonable interpretation in light of the specification. It is noted

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that this limitation sets forth an intended use (i.e. attaching an object to a package), and thus a reference need not show a package to anticipate the limitation. The "mechanism" is the required claim element, and the screws adapted to insert into screw-holes P of Gregory anticipate the "mechanism."

With respect to the "retrofit bracket," the Examiner maintains that the disk N disclosed by Gregory anticipates this limitation. The disk N is adapted to support a typewriter having attachment holes of predefined spacing that align with holes P shown in Figure 2 of Gregory. Disk N is rotatably and removably attached to the shelf assembly F via thumbscrew O (Gregory, Figure 1).

4. Claim 7

In regard to claim 7, Gregory clearly discloses the disk N having two sides, a lower side attached to the bracket F, and an upper side that attaches to the object (a typewriter).

C. The Rejection of Claims 2, 3, 10, 11, 12, and 14-16 Under 35 U.S.C. 103

1. Claim 2

In regard to the rejection of claim 2, Appellant contends that the rejection based on Gregory in view of Winter does not cure the alleged deficiencies of the Gregory reference; appellant does not argue that the combination of references itself is improper. Because the rejections based on Gregory are maintained, and because

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Appellant has not argued the combination, the rejections based on Gregory in view of Winter are similarly maintained.

2. Claim 3

In regard to claim 3, Appellant argues that “Gregory and Winter fail to disclose the wall mounting assemblies mount the shelf assembly at an acute angle.” (Appeal Brief, page 12). As clearly shown in Figure 3 of the Winter reference, wall mounting assemblies mount a shelf assembly at an angle that is acute to a horizontal line defined by the wall mounting assembly’s projection from the wall. Appellant further argues that “there is no teaching motivation, or rationale of obviousness to modify [Gregory] to include this feature.” (Appeal Brief, page 12). The Examiner maintains that various rationales exist for mounting the support disclosed by Gregory at an angle acute to the horizontal (i.e. tilted slightly upward). As set forth in the Final Rejection, one rationale would be to bias the mounted object towards the vertical support to which the object support is mounted so that, in the event the object becomes detached from the object support, it would fall towards the vertical support instead of away from the vertical support, and possibly towards or onto a user or viewer of the object. A rationale for supporting a typewriter in particular at an acute angle would be to provide a user with different options for positioning the typewriter relative to his seating position. Different people have different preferences for how a keyboard or typewriter is positioned relative to their bodies when typing. Gregory teaches different means for providing an adjustable typewriter support about a horizontal plane (i.e. pin H, thumbscrew I, disk N,

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and thumbscrew O). It follows that it would be desirable to also allow adjustment about a vertical plane. The angled wall mounting assembly disclosed by Winter would be an easily implemented means for achieving this adjustability. A third rationale would be to allow the typewriter to be supported at a height above the maximum height of the desk.

3. Claim 10

In regard to claim 10, Appellant relies on alleged deficiencies of the Gregory reference set forth with respect to claim 1 (Appeal Brief, pages 13-15). These alleged deficiencies have been addressed in Section B, Subsection 1 above.

Appellant further contends that Winter does not cure the alleged deficiencies of Gregory. Because the rejections based on Gregory are maintained, this argument is not addressed.

With respect to claim 10, it is noted that Appellant does not address the combination of Gregory and Winter with respect to Winter's teaching of a transparent material (Final Rejection, page 4). The rejection based on said combination is therefore maintained.

4. Claim 11

In regard to claim 11, Appellant argues that "Gregory and Winter fail to disclose ... a transparent material." (Appeal Brief, page 16). As clearly shown in the Winter reference, the display shelf is constructed of a transparent material, allowing the wall mount assemblies to be seen through the shelf and vice versa. Appellant further argues

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"there is no teaching, motivation, or rationale to modify [Gregory] to include this feature." (Appeal Brief, page 16). Motivation for constructing an object support out of a transparent material would be to focus visual attention on the object as opposed to the support, or to provide a full view of the object. An additional reason for using the material of Winter would be to construct the support of Gregory out of a plastic or other lightweight material that is commonly transparent.

5. Claim 12

In regard to claim 12, Appellant's arguments are addressed in Section C, Subsection 2 above with respect to claim 3.

6. Claim 14

In regard to claim 14, Appellant's arguments are addressed in Section B, Subsection 2 above, with respect to claim 5.

7. Claim 15

In regard to claim 15, Appellant's arguments are addressed in Section B, Subsection 3 above, with respect to claim 6.

8. Claim 16

In regard to claim 16, Appellant's arguments are addressed in Section B, Subsection 4 above, with respect to claim 7.

D. The Rejection of Claims 8, 9, 17, and 18 Under 35 U.S.C. 103

1. Claim 8

In regard to claim 8, Appellant relies on alleged deficiencies of the Gregory reference and the Winter reference. (Appeal Brief, page 18). These alleged deficiencies have been addressed in Section B, Subsections 1, 3, and 4 above, which respectively correspond to claims 1, 6, and 7.

Appellant further contends that Peters does not cure the alleged deficiencies of Gregory and Gregory in view of Winter. Because the rejections based on Gregory and Gregory in view of Winter are maintained, this argument is not addressed.

Appellant further contends that "Gregory, Winter, and Peters fail to disclose the retrofit bracket enables a person to view at least a majority of the display object's surface through the retrofit bracket" and that "there is no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature." (Appeal Brief, page 19). The Examiner maintains the rejection of claim 8 as unpatentable over Gregory in view of Winter and further in view of Peters. Peters shows a display device comprising an object support 30 comprised of transparent material. (Peters, col. 2, line 28). Rationales for providing the clear support disclosed by Peters would be similar to those set forth above in Section C, Subsection 4 with respect to the combination of the Gregory and Winter references.

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2. Claim 9

In regard to claim 9, Appellant's arguments are addressed in Section D, Subsection 1 immediately above with respect to claim 8.

3. Claim 17

In regard to claim 17, Appellant's arguments are addressed in Section D, Subsection 1 above with respect to claim 8.

4. Claim 18

In regard to claim 18, Appellant's arguments are addressed in Section D, Subsection 1 above with respect to claim 8.

E. The Rejection of Claims 4 and 13 Under 35 U.S.C. 103

1. Claim 4

In regard to claim 4, Appellant relies on alleged deficiencies of the Gregory reference. (Appeal Brief, page 20). These alleged deficiencies have been addressed in Section B, Subsection 1, which corresponds to claim 1.

Appellant further contends that Sickels does not cure the alleged deficiencies of Gregory. Because the rejections based on Gregory are maintained, this argument is not addressed.

Appellant further contends that "Gregory, Winter, and Sickels fail to disclose the wall mount assemblies mount the shelf assembly parallel to the wall" and that "there is

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no teaching, motivation, or rationale of obviousness to modify any of the applied references to include this feature." (Appeal Brief, page 21). The Examiner maintains the rejection of claim 4 as unpatentable over Gregory in view of Winter and further in view of Sickels. Sickels discloses a mounting bracket assembly wherein the primary support surface of the assembly is disposed parallel to a wall to which the assembly is attached. (Sickels, Figure 1). The Gregory reference teaches pivoting of the primary support bracket F so that it may extend perpendicular to the vertical surface to which it is attached, parallel to that surface, or in any orientation between zero and 180 degrees relative to the surface. The rationale for positioning the support of Gregory in the parallel orientation (such as that disclosed by Sickels) would be to allow it to support objects of various sizes at different distances from the vertical surface.

Accordingly, the rejection of claim 4 should be affirmed.

2. Claim 13

In regard to claim 13, Appellant's arguments are addressed in Section E, Subsection 1 immediately above with respect to claim 4.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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